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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/576,433 | 11/07/2006 | Malcolm Bicknell McInnes | 30276/04005 | 2394 |

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CALFEE HALTER & GRISWOLD, LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND, OH 44114

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| EXAMINER |
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BELLAMY, TAMIKO D

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| ART UNIT | PAPER NUMBER |
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2856

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04/30/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@calfee.com
dcunin@calfee.com

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/576,433 | Applicant(s) MCINNES ET AL. | |
| | Examiner TAMIKO D. BELLAMY | Art Unit 2856 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, and 7, 8, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothele (4,946,650).

Re claim 1, as depicted in fig. 5, Rothele discloses a delivery opening (e.g., sampling mouth/opening 10) at the upper end of housing (16). A deflector (17) is within the housing (16) having an upper end (see apex end) located below the delivery opening (10). A receptacle means (e.g., distributor tube/pipe 20) receives a sample of material (e.g., main product flow 1) flowing downwardly from a lower peripheral edge (see upper portion of pipe (20) that interfaces with the bottom of deflection cone (17)) (Col. 7, lines 7-17). Rothele discloses a means (e.g., integrated drive motor 14) for moving the receptacle means (e.g., distributing pipe 20) (Col. 10, lines 2-9). A collection means {e.g., combination housing of sample splitter (34), flanged collection container (47), safety screen (38), deflection chute (49), and sample discharge pipe (39)} is located beneath the receptacle means (20) (Col. 10, lines 10-15). There is a waste opening (e.g., additional connection element 74) (Col. 10, lines 26-30).

Re claim 2, as depicted in fig. 5, the deflector (17) comprises walls that diverge downwardly.

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Re claim 3, as depicted in fig. 5, the deflector (17) is conically shaped (Col. 7, lines 9-12).

Re claim 4, as depicted in fig. 5, the receptacle means (e.g., distributing pipe 20) is secured to the lower peripheral edge of the deflector (17) (Col. 9, line 66-68; Col. 10, lines 1-4).

Re claim 5, the drive means is a motor (14).

Re claim 7, as depicted in fig. 5, the collection means (47) comprises a funnel (see housing of sample splitter (34) and splitter (60)).

Re claim 8, as depicted in fig. 5, the receptacle means (20) has a rectilinear opening.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 9-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rothele (4,946,650).

Re claims 6 and 14, as depicted in fig. 5, Rothele discloses and integrated drive. The term "integral" does not require a unitary one-piece structure. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). The constructional unit (17, 18, 19, and 20 form a constructional unit (having elements connected together) (Col. 9, lines 65-68; Col. 10, lines 1-2). **While Rothele does not**

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specifically discloses that the receptacle means is removably attached to the deflector, the receptacle (20) is one element of the construction unit that is attached to the deflector (17). The separation of elements, where removability would be desirable, is a design consideration within the skill of the art. In re Dulberg, 283 F.2d 522, 129 USPQ 348 (CCPA 1961). Therefore, to employ Rothele on a removably attaching the receptacle form the deflector would have been obvious to one of ordinary skill in the art at the time of the invention since this reference explicitly teaches that the receptacle is one element that is attached to the deflector element, and together these elements form a part of the constructional unit.

Re claim 9, Rothele discloses the claimed invention except for two receptacle containers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an additional receptacle container, since it has been held in that the mere duplicating the essential working parts of a device involves only routine skill in the art components of a prior art device is a design consideration within the skill of the art. St Regis Paper Co. v. Bemis Co. 193 USPQ 8.

Re claims 10 and 11, Rothele discloses the claimed invention except for two collection means containers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an additional collection means, since it has been held in that the mere duplicating the essential working parts of a device involves only routine skill in the art components of a prior art device is a design consideration within the skill of the art. St Regis Paper Co. v. Bemis Co. 193 USPQ 8.

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Response to Arguments

5. Applicant's arguments with respect to claims 1-12, and 14 have been considered but are moot in view of the new ground(s) of rejection. It is the examiners position that claims 1-12, and 14 are not patentable in view of the newly applied art of Rothele (4,946,650).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMIKO D. BELLAMY whose telephone number is (571)272-2190. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hezron Williams/
Supervisory Patent Examiner, Art Unit
2856

Tamiko Bellamy
/TB/
April 22, 2009